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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,884	01/15/2004	David Wayne Spears	081950-0001	8466

7590 09/30/2008  
DAVID SPEARS  
1735 LINCOLN AVENUE # 39  
TORRANCE, CA 90501

EXAMINER
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FRENEL, VANEL

ART UNIT	PAPER NUMBER
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3687

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09/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,884	<b>Applicant(s)</b> SPEARS ET AL.	
	<b>Examiner</b> VANEL FRENEL	<b>Art Unit</b> 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Notice to Applicant**

1. This communication is in response to the application filed on 1/15/04. Claims 1-4, 6-9 are pending.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 2-4, 8 and 9 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 2-4, 8 and 9 recite a process comprising the steps of increasing and setting. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goel (20080052185) in view of Mesaros (7,181,419).

As per claim 1, Goel discloses a computer-implemented method for increasing advance orders, comprising: at a seller computer, storing a first release date for a product, storing a goal based at least in part on the number of advance orders for said product, setting a second release date for said product that is prior to said first release date (See Goel, Paragraphs 0008, 0016; 0335, 0482).

Goel does not explicitly disclose sending information about said product and said goal to a plurality of buyer computers, receiving advance orders for said product from at least some of said plurality of buyer computers, communicating goal feedback information to said plurality of buyer computers, and releasing said product on said second release date if said goal is met or releasing said product on said first release date if said goal is not met.

However, this feature is known in the art, as evidenced by Mesaros. In particular, Mesaros suggests that the method having sending information about said product and said goal to a plurality of buyer computers, receiving advance orders for said product

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from at least some of said plurality of buyer computers, communicating goal feedback information to said plurality of buyer computers, and releasing said product on said second release date if said goal is met or releasing said product on said first release date if said goal is not met (See Mesaros, Fig. 4c; Col. 1, lines 49-67; Col. 6, lines 44-67 to Col. 7, line 19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Mesaros within the system of Goel with the motivation of providing buyers and sellers may concurrently sponsor a deal room/transaction to aggregate selling of and purchasing of goods/services by a plurality of sellers and buyers respectively. For example, multiple sellers and buyers may employ the present invention to create a deal room/transaction forum where a plurality of sellers and buyers may assemble to aggregate selling and buying of specific goods and/or services that the sellers wish to sell and the buyers desire to purchase (See Mesaros, Col. 2, lines 23-34).

As per claim 2, Goel discloses a method for increasing advance orders, comprising: setting a first release date for a product, setting a goal based at least in part on the number of advance orders for said product (See Goel, Paragraphs 0008, 0016; 0335, 0482).

Goel does not explicitly disclose receiving advance orders for said product from a plurality of buyers, and changing said first release date to a second release date if said goal is met, wherein said second release date is prior to said first release date.

However, this feature is known in the art, as evidenced by Mesaros. In particular, Mesaros suggests that the method having receiving advance orders for said product from a plurality of buyers, and changing said first release date to a second release date if said goal is met, wherein said second release date is prior to said first release date (See Mesaros, Fig. 4c; Col. 1, lines 49-67; Col. 6, lines 44-67 to Col. 7, line 19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Mesaros within the system of Goel with the motivation of providing buyers and sellers may concurrently sponsor a deal room/transaction to aggregate selling of and purchasing of goods/services by a plurality of sellers and buyers respectively. For example, multiple sellers and buyers may employ the present invention to create a deal room/transaction forum where a plurality of sellers and buyers may assemble to aggregate selling and buying of specific goods and/or services that the sellers wish to sell and the buyers desire to purchase (See Mesaros, Col. 2, lines 23-34).

As per claim 3, Goel discloses the method further comprising sending said goal and goal feedback information to at least some of said plurality of buyers (See Goel, Paragraphs 0008, 0016; 0335, 0482).

As per claim 4, Goel discloses the method further comprising changing said second release date to a third release date if a second goal is met, wherein said third

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release date is prior to said second release date (See Goel, Paragraphs 0008, 0016; 0335, 0482).

Claims 6 and 9 are similar to claim 2, are therefore rejected under the same rationale, and incorporated herein.

Claim 7 differs from claims 1, 2 and 6 recite a machine readable medium having stored thereon data representing sequences of instructions, which when executed by a seller computer cause said seller computer to execute.

As per this limitation, it is noted that Goel discloses a method for increasing advance orders, the method comprising: sending a first release date for a product to a plurality of buyer computers (See Goel, Paragraphs 0008, 0016; 0335, 0482) and Mesaros discloses sending a goal based at least in part on the number of advance orders for said product to said plurality of buyer computers, receiving advance orders for said product, and using a second release date instead of said first release date if said goal is met, wherein said second release date is prior to said first release date (See Mesaros, Fig. 46; Col. 1, lines 49-67; Col. 6, lines 44-67 to Col. 7, line 19).

Thus, it is readily apparent that the prior art system utilize a machine readable medium having stored thereon data representing sequences of instructions, which when executed by a seller computer cause said seller computer to execute.

The remainder of claim 7 is rejected for the same reasons given above for claims 1, 2 and 6, and are incorporated herein.

As per claim 8, Goel discloses a method for increasing advance orders (See Goel, Paragraphs 0008, 0016; 0335, 0482).

Goel does not explicitly disclose receiving advance orders for a product with a specified release date from a plurality of buyers, and moving up the release date for said product if a goal is met, wherein said goal is based at least in part on the number of advance orders received.

However, this feature is known in the art, as evidenced by Mesaros. In particular, Mesaros suggests receiving advance orders for a product with a specified release date from a plurality of buyers, and moving up the release date for said product if a goal is met, wherein said goal is based at least in part on the number of advance orders received (See Mesaros, Fig. 4c; Col. 1, lines 49-67; Col. 6, lines 44-67 to Col. 7, line 19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Mesaros within the system of Goel with the motivation of providing buyers and sellers may concurrently sponsor a deal room/transaction to aggregate selling of and purchasing of goods/services by a plurality of sellers and buyers respectively. For example, multiple sellers and buyers may employ the present invention to create a deal room/transaction forum where a plurality of sellers and buyers may assemble to aggregate selling and buying of specific goods and/or services that the sellers wish to sell and the buyers desire to purchase (See Mesaros, Col. 2, lines 23-34).



***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied prior art teaches demand aggregation for future item planning contingent threshold demand (2008/0097827).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VANEL FRENEL whose telephone number is (571)272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vanel Frenel/  
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September 27, 2008